IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 353 OF 1998

1. IVP Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Shashikant Redij Marg, Ghorupdo, Mumbai 400 033.

2. Mr. S.S. Sayed a Shareholder and Director of the Petitioner No.1 abovenamed carrying on business at IVP Limited, Shashikant Redij Marg, Ghorupdeo, Mumbai 400 033 .. Petitioners

Vs.

1. The Mumbai Agricultural
Produce Market Committee
having its Head Office at
Central Building, Turbhe,
Navi Mumbai 400 703 and
its Branch Office at
Shri Chhatrapati Shivaji
Maharaj Mandai, Phalton Road,
Mumbai 400 001.

2. The Deputy Secretary
Development Phase II
Market 3, Mumbai Agricultural
Produce Market Committee, having
his office at Shri Chhatrapati
Shivaji Maharaj Mandai,
Phalton Road, Mumbai 400 001.

3. The State of Maharashtra
Agriculture and Co-operation
Department, Mantralaya Annexe,
Mumbai - 400 032. .. Respondents

Mr. R.A. Dada with P.A. Sawant, Ms. T.M. Kapadia and Ms. Ruchi Soni i/by Joy Legal Consultants for petitioenrs.
Mr. Y.R. Naik with Mr. Prashant Naik for Respondent Nos.1 and 2.
Mr. K.K. Singhvi, Spl. Sr. Counsel with Ms. Madulata Kajale, AGP for respondent no.3.

WITH
WRIT PETITION NO. 1341 OF 1998

1. Hindustand Lever Limited, a
Company incorporated under the
Companies Act, 1956 having its
Registered Office at Hindustan
Lever House, 165/166, Backbay
Reclamation, Bombay - 400 020.

2. K.S. Pachoo, S/O late K.S.
Srinivasachari, a shareholder of
the Petitioner Company
abovenamed and residing at
D-I-3, Tata Housing Centre,
Lallubhai Park Road,
Andheri (W), Mumbai - 400 058. .. Petitioners

Vs.

1. The Mumbai Agricultural
Produce Market Committee
having its Head Office at
Central Building, Turbhe,
Navi Mumbai 400 703 and
its Branch Office at
Shri Chhatrapati Shivaji
Maharaj Mandai, Phalton Road,
Mumbai 400 001.

2. Deputy Secretary, Vikas Tappa 2,
Market 3, Mumbai Agricultural
Produce Market Committee, having
his office at Shri Chhatrapati
Shivaji Maharaj Mandai, 3rd floor,
Phalton Road, Mumbai 400 001.

3. The State of Maharashtra
through the Principal Secretary
(Co-operatives) having his office
at Mantralaya,
Mumbai - 400 032.

4. The District Collector
Old Customs House
Near Town Hall/Asiatic
Library, Fort, Mumbai. .. Respondents

Mr. Prashant Bhagwati with Mr. Manek Joshi i/by M & M Legal Venture for petitioners.
Mr. Y.R. Naik with Mr. Prashant Naik for respondent nos.1 and 2.
Mr. K.K. Singhvi, Spl. Sr. Counsel with Ms.

Madulata Kajale, AGP for respondent nos.3 and 4.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Reserved on : April 24, 2006.

Pronounced on : June 16, 2006.

JUDGMENT: (PER B.H. MARLAPALLE,J.):

1. In both these petitions the following issues arise for our considerations:-

(a) Whether the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short the Act) are applicable to the product called "Vanaspati" when the petitioner-companies claim that it is not an agricultural produce within the meaning of Section 2(1)(a) of the Act and when it is not included in the schedule to the Act and in any case it is not an edible oil?

(b) Whether the State Government Notification No.APM.1384/31159/369/11-C dated 25/9/1987 in so far as it relates to the entry "Edible oils" is ultra vires the provisions of the Act and null and void and liable to be struck down as such?

(c) Whether the respondent no.1 APMC has the powers under Section 31 of the Act to levy and recover the market fees on the product "Vanaspati" from the petitioners who are the manufacturers/sellers of the said product?

(d) Whether the APMC has powers to levy and recover supervision charges under Section 34A of the Act from the petitioners?

(e) Whether the respondent no.1 has lawful powers to levy interest on the recoveries of market fees and supervision charges?

(f) Legality and validity of the demand notices based on the orders of assessment for recovery of market fees and supervision charges issued by the respondent nos.1 and 2.

2. In Writ Petition No.353 of 1998 the petitioner no.1 is a company registered under the Indian Companies Act, 1956 with its registered office at Mumbai. It is a manufacturer of "Vanaspati" and the said product is marketed all over the country through a marketing network of sales representatives, dealers, retailers and traders etc. Similarly, in Writ

Petition No.1341 of 1998 the petitioner no.1 - Company is a manufacturer of "Vanaspati", Edible oils and Ghee etc. which are marketed and supplied throughout the country. The Vanaspati manufactured by both the companies is also supplied within the city of Mumbai and its neighbouring areas through the marketing network.

. The respondent no.1 is a statutory body established under the provisions of the Act and it exercises powers and undertakes its functions under the Act and the Rules/Regulations framed thereunder. In addition, it has its bye-laws framed under Section 61 of the Act. It was established initially under the Bombay Agricultural Produce Regulation Marketing Act, 1939 and subsequently it was brought within the purview of the Act sometimes in 1987. The market area of respondent no.1 comprises of the entire area of Greater Bombay Municipal Corporation and some part of the neighbouring Thane District. The Government of Maharashtra issued the impugned GR dated 25/9/1987 and amended the schedule to the Act by incorporating, inter alia, the entry of "Edible oils" at Serial No.XIX. By the said gazetted modification, the following products were added in the schedule:-

(a) Splits (Dal of Pulses, Sr.No.III, Entry

No.14)

(b) Sugar (Sr.No.VI)

(c) Ghee (Sr.No.IX, Entry No.11)

(d) Wheat flour (Sr.No.XVII)

(e) Dry fruits (Sr.No.XVIII)

(f) Edible oils (Sr.No.XIX)

. It may be noted at this stage itself that Splits (Dal of Pulses) has been added under the heading of "Pulses", Ghee has been added under the heading "Animal Husbandry Products", Sugar has been added in the same entry as Gul and Sugarcane, and there is no separate addition of "Vanaspati" in the schedule. It is the case of the respondent nos.1 and 2 and supported by the State of Maharashtra (respondent no.3) that the product "Vanaspati" is an Edible oil and, therefore, covered by Entry No.XIX added by the impugned Government Notification dated 25/9/1987.

3. Though the Government of Maharashtra has not filed separate reply, through the arguments of its

Special Counsel Mr. K.K. Singhvi, it has supported the legality and validity of the Notification dated 25/9/1987 and it has been urged before us that it does not suffer from any challenge on the ground being ultra vires of the provisions of the Act. All the respondents contend that the product "Vanaspati" is nothing but an Edible oil and, therefore, it falls in Entry No.XIX which is of "Edible oils". The respondents have opposed the contentions of the petitioners that, (a) Vanaspati is not an Edible oil and (b) Vanaspati as well as Edible oil are not agricultural produce as defined under Section 2(1)(a) of the Act. The respondent nos.1 and 2 by filing separate affidavits have supported the impugned demand notices based on the assessment orders passed by the respondent no.2 and confirmed by the Lower Appellate forum.

4. To answer the issues raised in both these petitions, we are at the threshold required to consider, whether Vanaspati is nothing but an Edible oil or whether it is a distinct commercial product and cannot be called as an Edible oil, when it is produced from the edible oils.

. It is true that Vanaspati is produced from various types of edible oils like Groundnut oil,

Cottonseed oil, Sesame oil, Rape/Mustard oil, Sunflower oil, Rice bran oil, Safflower oil and Soyabean and Palm oil. The process of Vanaspati production can be broadly divided into the following operations:-

(a) pre-refining including bleaching of vegetable oils;

(b) hydrogenation;

(c) post-refining including bleaching;

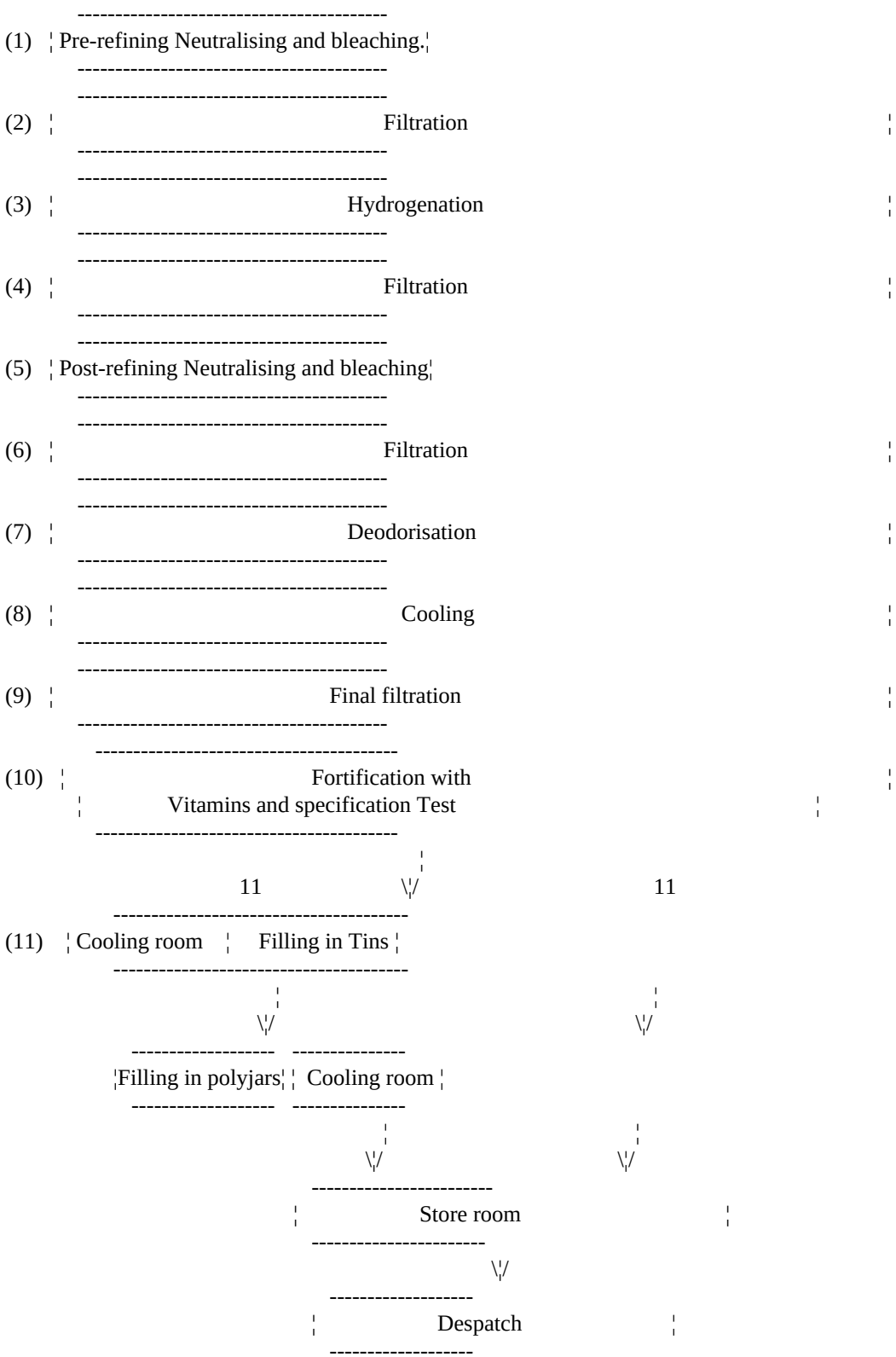
(d) deodorization;

(e) fortification with vitamins; and

(f) packaging and refrigeration

and admittedly after every stage of the above mentioned processes, there is a stage of filtration/final filtration and cooling etc. after deodorization. Apart from the edible oils, the other raw materials required for the manufacture of Vanaspati are hydrogen gas, catalyst, caustic soda and bleaching earth. The Flow Chart of the production process of Vanaspati could be reproduced as under:-

Vegetable Product: Flow Chart



5. It was submitted by the learned Senior Counsel for the petitioners that Vanaspati is a distinct product from edible oils and even for commercial purposes it remains so. It is produced from Edible oils which are, in turn, produced from different oil seeds and it has a solid form in appearance, whereas Edible oil is in semi liquid or thick liquid form for the common parlance or general public. Vanaspati is a different product from Edible oil and, therefore, it cannot fall in the category of Edible oils for levying market fees and supervision charges by the respondent no.1. These arguments do not convince us and, in fact, have already been repelled by the decisions of the Apex Court from time to time. We may refer to the Constitution Bench decision in the case of M/s. Tungabhadra Industries Ltd. Vs. the Commercial Tax Officer (**AIR 1961 SC 412**) on the point whether Vanaspati is different from Edible oil, which term includes refined edible oil as well. The Tribunal and High Court had held that the hydrogenated oil or vanaspati ceased to be groundnut oil by reason of the chemical changes which took place and resulted in the acquisition of new properties including the loss of its fluidity. The Supreme Court held, inter alia,

".....No doubt, several oils are normally viscous fluids, but they do harden and assume semi-solid condition on the lowering of the temperature. Though groundnut oil is, at normal temperature, a viscous liquid, it assumes semi-solid condition if kept for a long enough time in a refrigerator. It is therefore not correct to say that a liquid state is an essential characteristic of a vegetable oil and that if the oil is not liquid, it, ceases to be oil. Mowrah oil and Dhup oil are instances where vegetable oils assume a semi-solid state even at normal temperatures. Neither these, nor coconut oil which hardens naturally on even a slight fall in temperature could be denied the name of oils because of their not being liquid.....

.....The addition of the hydrogen atoms was effected in order to saturate a portion of the oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality & utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily

understood.....

.....There is no use to which groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Similarly, we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil.....

. The same view has been reiterated subsequently in the case of Champaklal H. Thakkar and ors. vs. State of Gujarat and anr. reported in **AIR 1980 SC 1889** and in the case of Collector of Central Excise vs. Jayant Oil Mills Pvt.Ltd. reported in **AIR 1989 SC 1316**. The Supreme Court turned down the contention that Vanaspati is a form of Ghee which is not an oil. In para 8 of its judgment in the case of Champaklal (Supra), the Supreme Court observed as under:-

"8. ..... The only argument advanced on

behalf of the appellants in this connection is, as it was before the two courts below, that vanaspati is a form of ghee which is not an oil; and this contention we find to be without force. Vanaspati, in our opinion, is essentially an oil although it is a different kind of oil than that oil (be it rapeseed oil, cotton-seed oil, ground-nut oil, soya-bean oil or any other oil) which forms its basic ingredient. Oil will remain oil if it retains its essential properties and merely because it has been subjected to certain processes would not convert it into a different substance. In other words, although certain additions have been made to and operations carried out on oil, it will still be classified as oil unless its essential characteristics have undergone a change so that it would be a misnomer to call it oil as understood in ordinary parlance.....

. All the ingredients of this meaning are fully satisfied in the case of hydrogenated vegetable oil. We may specially point out that even solids easily liquefiable on warming fall within the meaning given by Webster. Now the various processes, namely, neutralization, bleaching, deodorisation, hardening and

hydrogenation to which oil is subjected for being converted into vanaspati leave its basic characteristics untouched, i.e. it remains a cooking medium with vegetable fat as its main ingredient. Neutralisation, bleaching and deodorisation are merely refining processes so that the colour, the odour and foreign substances are removed from it before it is hydrogenated and hardened and even the two processes last mentioned allow the oil to retain these characteristics.....

. We pointedly asked learned counsel for the appellants if he could indicate any difference between vegetable oil and vanaspati which would essentially distinguish the former from the latter, either in physical or chemical properties or in food value. No such difference was indicated and all that he said was that vanaspati would normally be available in solid state and had the appearance of ghee rather than that of any oil. This, in our view, it is a superficial difference which does not at all go to the root of the matter. Accordingly, we hold that vanaspati must be regarded as an oil for the purpose of the aforesaid item 5 inspite of all the processes

to which the oil forming its base has been subjected in order to convert it into the finished product."

. It is thus clear that as per the well settled legal position, Vanaspati is nothing short of hydrogenated refined oil and, therefore, it would fall in the entry of "Edible oil" for the purpose of the Act. We reject the contention that Vanaspati is altogether a different product from edible oils and it cannot be treated to fall under Entry No.XIX in the schedule to the Act, namely edible oil.

6. Now we come to the next issue argued by the petitioners, namely, that Vanaspati or edible oil is not an agricultural produce within the meaning of Section 2(1)(a) of the Act. These contentions are mainly based on the ground that the word "manufacture" is not appearing in the definition of "agricultural produce" under Section 2(1)(a) of the Act. The said definition reads as under:-

"2.(1) In this Act, unless the context otherwise requires,-

(a) "agricultural produce" means all produce (whether processed or not) of agriculture,

horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule."

7. It was submitted that Vanaspati is manufactured from edible oils and it cannot be said to be a processed product and unless the word "manufacture" was added in the definition of "agricultural produce" in Section 2(1)(a), the provisions of the Act cannot be made applicable to Vanaspati. Strong reliance has been placed in this regard on the decision of the Patna High Court in the case of M/s. Prabhat Zarda Factory and anr. vs. State of Bihar and anr. **(AIR 1985 Patna 241)**, which decision has been confirmed by the Supreme Court in Prabhat Zarda case reported in 1994 Supplement (2) SCC 514. The Bihar Agricultural Produce Markets Act, 1960 defined the term "agricultural produce" as under:-

"agricultural produce includes all produce, whether processed or non processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule."

8. It was held that Zafrani Zarda manufactured by the petitioner therein though was an excisable commodity under the Central Excises and Salt Act, it

was not an agricultural produce within the meaning of Section 2(1)(a) of the Bihar A.P.M.C. Act. It was the case of the State Government that Zafrani Zarda was nothing but tobacco and tobacco was listed as one of the commodities in the schedule to the Act. The High Court rejected this contention mainly on the ground that the wider definition of "agricultural produce" in Section 2(1)(a) took note of "processing" and not of "manufacturing" and this view was taken by following the decision of the Supreme Court in the case of State of Madras vs. Bell Mark Tobacco Co. **(1967) 19 S.T.C. 129 (SC)**. In that case the Supreme Court in unequivocal terms held that chewing tobacco was a manufactured item from raw tobacco and, therefore, following the said decision, the Patna High Court held that Zafrani Zarda becomes all the more a different commodity from tobacco and stated " it would not be proper to include within the ambit all bye-products or finished products which become entirely a different commodity and known and understood as such in the market as well as in the common parlance". In fact, in the said case the Patna High Court noted thus:-

> "....It is thus obvious that each case of processing cannot be manufacturing; in each case of manufacturing there will be an element

of processing. Almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his field or farm in the first instance in order to make it transportable and marketable commodity. For example, the two main food products, namely, paddy and wheat, have to be husked, threshed and subjected to other processes to make them reach the markets. In each case, therefor, the test would be as to whether the processing done to the raw agricultural produce was a necessary concomitant and minimal or it was so cumbersome or long drawn that the end product changed its basic shape and name in common parlance as well as in the market became known to be an entirely different commodity. In that situation its processing takes the shape of manufacturing the commodity into a different item, for example, Suji and flour which are products of wheat become entirely different items. Similarly, Chenna, Khowa, Besan, Sattu, Chura etc. become an entirely different commodity and it is, perhaps, in that view of the matter that in category No.I of the schedule dealing with ‘cereals’, besides paddy and wheat, rice, wheat Atta,

Suji, Maida, Choora, Murhi etc. have also been separately included as independent items."

. The Patna High Court also noted that the process for the manufacturing of Zafrani Zarda was more extensive and cumbersome than preparing chewing tobacco and chewing tobacco was a manufactured item and a different item than tobacco.

9. We have noted down the entire process as to how Vanspati is produced from edible oils. The edible oils are subjected to various processes and the end product of all these processes is Vanaspati. The processes are (i) Pre-refining Neutralising and bleaching, (ii) Hydrogenation, (iii) Post-refining Neutralising and bleaching, (iv) Deodorisation, (v) Cooling, (vi) Fortification with Vitamins and specification Test etc. The production of dalda or vanaspati from edible oils is thus the result of the edible oils undergoing all these processes which convert edible oils to a new entity called "Vanaspati". We noted earlier that Vanaspati is nothing but a hydrogenated refined edible oil. In each case of manufacturing there is an element of processing and, therefore, just because the word "manufacturing" is not included in the definition of

the term "agricultural produce" in Section 2(1)(a) of the Act, it cannot be accepted that Vanaspati is not an agricultural produce. There can be no doubt that edible oils are agricultural produce. It is well known that edible oils are produced from oil seeds which are an agricultural produce and it cannot be accepted that edible oil looses its identity as an agricultural produce, at any time. The oil seeds are subjected to various processes so as to obtain edible oils. Initially, it could be raw oil but when subjected to different processes of filtration it becomes refined edible oil. The word "processing" thus takes the same meaning as the word "manufacturing" in the case of edible oil and vanaspati, the later being a product obtained from the former on account of different processes.

. In the case of Belsund Sugar Co. Ltd. vs. the State of Bihar & Ors. etc. **(JT 1999 (5) SC 422)** the Constitution Bench while dealing with Vegetable Oils stated,

> "....All vegetable oils are treated to be "agricultural produce" as per serial no.4 of the schedule framed under Section 2(1)(a) of the Market Act. In view of the general sweep of the said definition, oil manufactured by

> the oil mills functioning within the areas of the Market Committees concerned by crushing oil-seeds which are undisputedly agricultural produce and subjecting them to manufacturing process cannot be said to be outside the sweep of the regulatory provisions of the Market Act."

. The dictionary meaning of the ter

"processing" (Black's Law Dictionary) reads as under:-

> "A series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced.
>
> Process is mode, method or operation whereby a result is produced; and means to prepare for market or to convert into marketable form."

. The meaning of the term "manufacturing" reads

as under:

> "the process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine."

. In our view Vanaspati is a product which is

obtained from the processing of edible oils and, therefore, it is an agricultural produce within the

meaning of Section 2(1)(a) of the Act. The absence of the word "manufacture" in Section 2(1)(a) of the Act does not exclude either edible oils or vanaspati from being an agricultural produce thereunder. We, therefore, hold that edible oils as well as vanaspati, which is also called dalda, are the agricultural produce within the meaning of Section 2(1)(a) of the Act, though vanaspati is produced from the edible oils.

10. The Act was brought into force to regulate the marketing of agricultural and certain other produce in market areas and markets to be established therefor in the State; to confer powers upon Market Committees to be constituted in connection with or acting for purposes connected with such markets; to establish Market Fund for purposes of the Market Committees and to provide for purposes connected with the matters thereto. Section 2 of the Act defines certain terms and the relevant ones are reproduced below for ready reference:-

> (a) "buyer" means a person, the Central Government or any State Government, who himself or itself or on behalf of any person or agent buys or agrees to buy agricultural produce in the market area;
>
> (b) "market" means any principal market

established for the purposes of this Act and also a subsidiary market;

(c) "market area" means an area specified in a declaration made under section 4 and includes the area deemed to be a market area under clause (a) of sub-section (1A) of section 13;

(d) "processor" means a person who processes any agricultural produce either of his own account, or on payment of charge;

(e) "trader" means a person who buys or sells agricultural produce, as a principal or as duly authorised agent of one or more persons;

. Section 3 is for regulating marketing of agricultural produce in specified area, whereas Section 4 is for regulation of marketing of specified agricultural produce in a market area. Section 5 states that for every market area, there shall be established a principal market, and there may be established one or more subsidiary markets. Section 6 deals with regulation of marketing of agricultural produce and sub-section (1) of the said Section reads as under :-

6(1) Subject to the provisions of the section and of the rules providing for regulating the marketing of agricultural produce in any place in the market area, no person shall, on and after the date on which the declaration is made under sub-section (1) of section 4, without, or otherwise than in conformity with the terms and conditions of, a licence (granted by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market

Committee) in this behalf,-

(a) use any place in the market area for the marketing of the declared agricultural produce, or

(b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce.

11. Section 7 deals with grant of licences and Section 8 is regarding the power to cancel or suspend such licences. The marketing of agricultural produce can be regulated under the Act but only in respect of those who are specified in the schedule and for different market areas it is not necessary that all the agricultural produce specified in the schedule are regulated. The State Government by another notification in the Official Gazette has to declare that the marketing of the agricultural produce specified in the notification shall be regulated under the Act, in the areas specified in the notification and the areas so specified shall be the market area. Such a notification published under Section 4 of the Act may also be published in a local newspaper or in any other manner as per the opinion of the State Government so as to bring the same to the notice of the persons in the area of declaration. Unless such a notification is issued under Section 4, the Market

Committee concerned has no powers to regulate the agricultural produce for its marketing and levy the market fees etc. Section 29 of the Act deals with the powers and duties of the Market Committee and sub-section (2) thereunder has listed such powers and duties. As per Clause XVII under sub-section (2), the Market Committee may levy, take, recover and receive charges, fees, rates and other sums or money to which the Market Committee is entitled. Section 30A empowers the Market Committee to open collection centres in the market area, duly authorised by the State Government in writing and once such collection centres are established, any person wishing to sell any notified produce in a market area, he shall tender all such produce only at the collection centre. As per sub-section (5) the dues to a Market Committee shall consist of fees to be levied and collected from a purchaser by or under the Act. Section 31 which empowers the Market Committee to levy and collect fees

reads as under :-

> "31. (1) It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette, in that behalf), from every purchaser of agricultural produce marketed in the market area:
>
> . Provided that, when any agricultural

produce brought in any market area for the purposes of processing only is not processed within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this section, as if it had been so marketed:

. Provided further that,-

(a) any agricultural produce brought in any market area for the exclusive purpose of export shall be exempted for the payment of fees and supervision cost, if such exporter of his duly authorised agent presents the letter of credit or confirmed order of exporter confirmed export order consignment, whichever is relevant or applicable, at the time of entry of such produce in the market area, to the officer authorised in this behalf by the market committee concerned along with a declaration in that behalf, in such form as the State Government may, by order from time to time, direct;

(b) if such exporter fails to submit a certified copy of the bill of lading or the air-freight bill or any other documents as may be specified by the State Government as a proof of such export, within ninety days from the date of entry of the agricultural produce in the market area, such agricultural produce shall be deemed to have been marketed within the market area and he shall forthwith pay the market fees under this section and shall also pay the supervision cost under section 34A on such agricultural produce, along with eighteen per cent interest on the total amount due and payable as the market fees and supervision cost, from the date of bringing of such produce in the market area.

. Provided also that, no such fees shall be levied and collected in the same market area in relation to agricultural produce in respect of which fees under this section have already been levied and collected therein or in relation to declared agricultural produce purchased by person engaged in industries carried on without the aid of any machinery or labour in any market area.

(2) It shall be competent to a Market Committee to fix, with the prior approval of the State Government, the rate of commission (adat) to be charged by the commission agents in respect of an agricultural produce or class of agricultural produce marketed in the market area.

(3) It shall be the duty of the buyer, commission agent, processor and trader to pay the market fee fixed immediately after weighment or measurement of the agricultural produce is done. The buyer, the commission agent, processor or trader who fails to pay the market fee as fixed above shall be liable to pay a penalty as prescribed in addition to such fees.

(4) Notwithstanding anything contained in this Act or any other law for the time being in force or in any agreement, it shall be competent to a Market Committee to recovery the amount of fees along with the amount of penalty which is due to a Market Committee from a buyer, commission agent, processor or trader-

(a) from the amount of deposit kept with the Market Committee by the buyer, commission agent, processor or trader, as the case may be;

(b) from the Bank which gives the guarantee to such buyer, commission agent, processor or trader, and the Bank shall, on demand by the Market Committee, pay the amount so demanded.

. Sections 34A and 34B read as under:-

34A. (1) The State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary; and subject to the provisions of this Chapter,

the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area.

(2) The cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area (in such manner as the State Government may deem fit), so however that the amount of the cost does not exceed five paise per hundred rupees of the purchase price of the agricultural produce which is purchased by such purchaser.

34B. (1) The cost of supervision shall be collected by the Market Committee in the same manner in which the fee levied by it under section 31 is collected.

(2) The cost of supervision collected by a Market Committee shall be paid to the State Government in the prescribed manner within a period of fifteen days from the close of the month in which such cost is collected.

. Under Section 62 of the Act, the State Government may, after consulting the Market Committee concerned by notification in the Official Gazette, add to, amend or cancel any of the items of agricultural produce specified in the Schedule. Under Section 60 the Government has the powers to frame Rules and accordingly the Rules have been framed and they are called "The Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (for short referred to as "the Rules". Rules 5, 32, 34-A which are relevant for deciding these petitions are reproduced as under:-

5. Marketing of agricultural produce.- (1) No person shall market any declared agricultural

produce in any place in a market area other than the principal market or subsidiary market established therein:

. Provided that, the Director may authorise any Market Committee, subject to such terms and conditions as he may deem fit, to permit a commission agent or trader to market declared agricultural produce, or to permit any other market functionary to operate, at any place within the market area such place being mentioned by the Market Committee in the licence granted to such commission agent, trader, or as the case may be, the market functionary.

(2) The particulars of any declared agricultural produced marketed in any market area shall be reported to the Market Committee in such manner as the Market Committee may require of the person marketing such produce.

32. Market Fees.- (1) A Market Committee may levy and collect fees on declared agricultural produce marketed in the market area on an ad valorem basis from the purchases at such rates as may be specified in the bye-laws of the committee, so however that such rates shall not be less than the minimum and more than the maximum rates notified by the State Government under section 31.

34A. Manner of payment of the cost of supervision under section 34B(2).-(1) A Market Committee shall collect the cost of supervision in the market area from the purchaser at a rate notified by the State Government under sub-section (2) of section 34-A.

(2) The cost of supervision shall be paid by the purchaser to the Market Committee after weighment or measurement of the declared agricultural produce.

(3) Secretary or any other person authorised by him in this behalf by the Market Committee shall pass receipt to the purchaser in token of his having paid the supervision.

(4) Every Market Committee shall maintain an upto date register showing the cost of supervision collected by it and duly signed by

the Secretary to the Market Committee.

(5) The Market Committee shall pay to the State Government the cost of supervision so collected within a period of fifteen days from the close of the month in which such cost is collected by a chalan in Government Treasury.

12. From the orders impugned in these petitions it is clear that respondent nos.1 and 2 have claimed market fees and supervision charges only in respect of the volume of vanaspati sold/marketed within the market area of respondent no.1-committee. It is submitted by the petitioners that the levy of market fees or demand thereof is illegal, more so when the respondent no.1 is not rendering any service to the petitioners in the marketing of vanaspati in the market area. The doctrine of "quid pro quo" has been relied upon in support of the contentions that unless some service is rendered by respondent no.1-committee to the petitioners in the marketing of vanaspati, market fees as well as supervision charges cannot be demanded. In the alternate it is also submitted that even if such fees or supervision charges are payable to respondent no. 1, they cannot be recovered from the manufacturers, like the petitioners and such charges are required to be recovered from the purchasers of vanaspati. In short, it is claimed that it is not the responsibility of the petitioners to pay such market fees and supervision

charges and if the respondent no.1 has failed to demand such recovery from the purchasers/buyers, it has no powers to claim such recoveries from the manufacturers/suppliers.

. The respondent-Market Committee on the other hand has taken a plea that the manufacturer/seller, includes trader and, therefore, under Section 31(3) of the Act it is empowered to recover the market fees as well as supervision charges from the manufacturers/sellers, like the petitioners. In addition, the committee has relied upon bye-law no.13(1) of its bye-laws framed under Section 61 of the Act. The official translation of the said bye-law reads as under:-

> 13(1) Market Committee shall have powers to levy market fee and supervision charges on the agricultural produce purchased in the market yard. The Purchaser shall have to pay the said fee and supervision charges. If a transaction is carried out through a Commission Agent, then it shall be the responsibility of the Commission Agent to recover the said fee and supervision charges and to pay the same to the Committee. If such transaction is carried out through any person other than Commission Agent, then in that case, it shall be the responsibility of such person to recover market fee and supervision charges from the Purchaser and to pay the same to the Market Committee."

. While admitting that the market fees is

required to be recovered from the buyers, it is contended by the Market Committee that on account of the manufacturers/suppliers not having obtained the licence for trading in the market area under Section 6 of the Act it has no control on the supplies made by the petitioners in the Bombay Market and more so when the names of such buyers were not intimated to the Market Committee by the petitioners in response to the show cause notice. The Market Committee is of the view that if intimation is given to it by the petitioners and other manufacturers of vanaspati regarding daily supplies of vanaspati to the Bombay Market, it will be possible for it to track down such buyers and recover the market fees. But in any case in the absence of regulating machinery available either in the premises of the petitioners or at the instance of the petitioners so as to have documentary proof to be made available to the Market Committee regarding the daily, weekly or monthly supplies to the Bombay Market, it will not be possible to recover the market fees from such buyers/traders and, therefore, it is a matter of last resort that the Market Committee issued the notices for recovery of the same,

contends the APMC.

13. The power to levy market fees flows from Section 31 and the power to recover cost of

supervision originates from Section 34A and 34B of the Act in favour of the Market Committee. The contentions of the petitioners that the Market Committee has no powers to recover the market fees from the manufacturers or any one else other than the buyers are mainly based on the decisions of this Court (DB) in the case of R.V. Deshpande Vs. APMC, Solapur **(1980 Mh. L.J. 432)** and Kirana Grains and Edible Oils, Wholesale and Retail Merchants Association, Chandrapur vs. State of Maharashtra and anr. **(1986 (2) Bom. C.R. 499)** and we must note here itself that both these decisions are not applicable in the instant cases. In the case of Devendra Trading Company vs. State of Maharashtra **(1974 Mh.L.J. 463)** the scheme for Section 31 fell for considerations and a Division Bench of this Court made the following observations:-

> "The substantive part of section 31 of the Marketing Act lays down two things. It empowers the Committee to levy and collect fees from every purchaser and that purchaser must be a purchaser of agricultural produce marketed in the market area. Unless these two conditions are fulfilled no fees can be levied or collected by the market committee even though the goods may be marketed in the area. The fees are leviable only on the sale

transaction of agricultural produce as defined in the Act read with schedule marketed in the market area and the liability for the payment of such fees is on the purchaser and not on the seller."

However, after the decision in Devendra Trading Company (Supra) was rendered by this court, the scheme of Section 31 came to be amended by Maharashtra 27 of 1987 drastically. The constitutional validity of the amendments made by Maharashtra Act No.27 of 1987 came to be challenged before this court in Sukhraj Bhikchand Jain vs. State of Maharashtra and anr. **(1996 (2) Mh.L.J. 511)** and a Division Bench upheld the constitutional validity by dismissing the challenge to the same. By Maharashtra Act No.8 of 1994 second proviso came to be added to Section 31 of the Act so as to exempt the exporters of agricultural produce from the payment of market fees and supervision cost. The scheme of Section 29 of the Bombay Agricultural Produce Markets Act, 1939, under which the respondent no.1 was originally established, provided that the State Government may by notification in the Official Gazette add to, amend or enhance any of the items of agricultural produce specified in the schedule. The validity of the said section was challenged on the grounds that it vested completely

unregulated powers on the State Government to include any agricultural produce in the schedule without any guidance or control whatsoever. The same challenge has been raised in the present petitions on the Government powers under Section 62 and, therefore, in view of the Constitution Bench decision in the case of Mohammad Hussain Gulam Mohammad and anr. vs. State of Bombay and anr. **(AIR 1962 SC 97)** the challenge to the State powers to amend the schedule to the Act is unsustainable.

14. The power to levy and recover market fees by the agricultural produce Market Committee was under challenge in the case of Ram Chandra Kailash Kumar & Co. & ors. vs. State of U.P. and anr. **(AIR 1980 SC 1124)** and on the same basis as is raised by the petitioners, namely, that in the absence of any service in return to the petitioners, in the sale/distribution of vanaspti, the respondent no.1 cannot claim recovery of market fees. These contentions have been rejected by the Constitution Bench. Subsequently, in the case of B.S.E. Brokers Forum, Bombay & ors. vs. Securities & Exchange Board of India & Ors. **(JT 2001 (2) SCC 242)** a similar issue had fallen for considerations and in para 37 the Apex Court repelled the challenge in the following words by following its earlier decision in the case of City

Corporation of Calicut (1985 (2) SCC 112),

> "the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd. (JT 1988 (4) SC 592), if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole."

15. Let us then come to the power to levy and collect market fees under Section 31 of the Act, including such recovery to be enforced against the manufacturers/suppliers to the exclusion of the buyers etc. Section 31(3) clearly stipulates that it shall be the duty of the buyer, commission agent, purchaser and trader to pay the market fee fixed immediately after weighment or measurement of the agricultural

produce is done. The buyer, commission agent, purchaser or trader who fails to pay the market fees as fixed above shall be liable to pay a penalty as prescribed in addition to such fees. (emphasis supplied)

. The word "trader" means a person who buys or sells agricultural produce as a principal or has duly authorised agent of one or more persons. It is the case of the Market Committee in the instant petitions that the petitioners fall within the ambit of the term "trader" as they are the persons selling agricultural produce as the principal and it makes no difference even if they are selling the agricultural produce produced by them. In the amended scheme of Section 31 the scope to recover market fees has enlarged and it has also extended to the sellers who sell the produce as a principal, as compared to the pre-amended provision which was considered by this court in the case of Devendra Trading Company (Supra). The old scheme of Section 31 restricted the liability for the payment of market fees to the purchaser and it was not to be recovered from the seller. In addition, by placing reliance on the provisions of bye-law no.13, the respondent no.1 claims that in the cases where the trading does not take place in the market specified but it takes place in the market area, there is no

question of restricting the collection of market fees from the buyer alone and more so when the buyers are not traceable in view of their large number. Bye-law no.13 specifically states that if the trading takes place, the market fees has to be paid by the buyer and when the trading is through Adtya (agent), the fees is recovered from the said Adtya/agent. But when trading has taken place not through Adtya/agent or in the market yard, the parties selling the agri produce in the market area shall be responsible for payment of market fees by recovering the same from the concerned buyers. Thus, the bye-law enables the manufacturers/suppliers to charge market fees to the buyers, recover the same and make it over to the respondent-Committee. If this is not done on regular basis, the Market Committee has the legal authority to cause recovery of the market fees from the seller who may be a manufacturer or supplier or importer, as the case may be. We, therefore, do not find any substance in the contentions of the petitioners that the respondent no.1-Committee has no powers to charge and demand the market fees from the petitioners.

16. Now coming to the issue of charging supervision fees, we have to keep in mind that there is a difference between the power of the Market Committee under Section 31 for levying market fees and

under Section 34A for supervision fees. Market fees is conceptually and in deed factually a revenue to the Market Committee so as to support its financial outlay in creating infrastructure and rendering services to the agriculturists, traders, agents, buyers and various other parties in the industry. Such is not the case so far as the supervision charges are concerned. As per Section 34A(1) of the Act the State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary and subject to the provisions of Chapter IV-A, the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area. As per sub-section (2) of Section 34A, the cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area, in such manner as the State Government may deem fit, so however that the amount of the cost does not exceed five paise per hundred rupees of the purchase price of the agricultural produce which is purchased by the purchaser. Essentially, the State Government in the first instance is required to employ such staff

appointed by it to render service in regulating the purchase/marketing of agricultural produce and then recovered the cost of supervision so as to meet the expenditure incurred on such staff in terms of their salary and other benefits etc. The cost to be paid by the purchaser has to be determined from time to time by the State Government and notified in the market or market area but in any case it shall not exceed five paise per hundred rupees of the purchase price of the agricultural produce. This means that from market to market the supervision charges may differ, as fixed by the State Government or in terms of its total quantum for recovery as it varies as per the number of staff employed. The scheme of Chapter V-A as inserted by Act No.26 of 1972, in the Act thus shows that cost of supervision is an incidental charge to be recovered and paid to the Government and in respect of the staff employed by it. It is not an absolute power of the Committee to recover the levy for its supervision or they are not the supervision charges paid to the Market Committee. As a condition precedent it must be shown that the Government had employed staff in rendering service either at the petitioners' premises or in the market area in regulating the sale/distribution of vanaspati and unless such staff is employed on whom the Government is required to spend by way of their salary and other benefits, the

Market Committee is not required to reimburse to the State Government supervision charges and, therefore, it cannot claim recovery from the petitioners per se. The scheme of Rule 34-A of the Rules is clear and it supports these conclusions. The impugned orders which have been passed either during the pendency of the petition or before the petition was filed are silent on the quantum of supervision charges paid by the respondent no.1-Committee to the State Government in respect of the sale/distribution of vanaspti produced by the petitioners and marketed in the market area of respondent no.1, though not from the market yard. In the absence of the petitioners having an outlet or a depot or a trading centre in the market yard of respondent no.1, the other place is only the premises of the petitioners as admittedly the respondent no.1 has not established any other collection centres or subsidiary markets by exercising powers under Section 5 and Section 30A of the Act. We are, therefore, of the considered view that the respondent no.1-Committee has no powers to cause recovery of supervision charges from the petitioners as at present and the impugned orders to that extent are unsustainable.

17. Now coming to the issue of the Market Committee's power to charge interest either at 12% or 21% or any rate between 12% to 21%, is concerned, the

Committee has relied upon bye-law no.14(A) which states that on failure to remit the market fees and supervision charges etc. in the succeeding month to the month for which they were payable are not paid, it is entitled to charge interest at the rate of 21% per annum on the amount of recovery. The official translation of the said Bye-law No.14(A) reads as under:-

> 14(A) As per the provisions of the Maharashtra Agricultural Produce Marekt (Regulation) Act, 1963 and Rules 1967 and the By-laws framed in pursuance thereof, the concerned Commission Agents, Traders-Importers or any other persons shall have to pay to the Market Committee the amounts viz. Market Fee, Supervision Fee, Weighing Charges, Levy etc. dues up to the end of next month from the month in which such amounts become due. If they fail to pay the same within the prescribed time limit, then interest at the rate of 21% per annum shall be charged on the total amount due."

. As against this under Section 31(3) of the Act, failure to pay the market fees, the Market Committee has the power to levy penal charges as prescribed over and above the recovery of fees. Under Section 34B of the Act, the cost of supervision shall be collected by the Market Committee in the same manner in which the fee levied by it under Section 31 is collected and under subsection (2) therein the cost of supervision collected by the Market Committee shall be paid to the State Government in the prescribed

manner within a period of 15 days from the close of the month in which such cost is collected. As per Section 34C of the Act, if a Market Committee makes a default in the collection or payment to the State Government of any sum or part thereof due in respect of the cost of supervision, the director may direct that the said sum or part thereof, as the case may be, together with penalty equal to 1% of such sum or part shall be recovered from the Market Committee as an arrear of land revenue under Section 57. Thus, the penal charges at 1% have been prescribed to be recovered from the Market Committee, in case the default for payment of supervision fees to the State Government. Bye-laws are framed under Section 61 of the Act, which states that subject to the Rules made by the State Government under Section 60, the Market Committee may in respect of the market area under its management make bye-laws for determining the quantity of agricultural produce for the purpose of its retail sale for the regulation of business including meeting, quorum and procedure of the Market Committee and the conditions of trading in the market area, including provision for refund of any fees levied under the Act, with the previous sanction of the Director or any other officer specially empowered in that behalf by the State Government. Rule 120 of the Rules pertains to framing of the bye-laws and it states that subject

to the provisions of Section 61 and the Rules, a Market Committee may make bye-laws in respect of all or any of the matters thereunder i.e. (a) to (y), levying interest does not find place thereunder. It is the case of the Market Committee that such a power falls within the ambit of Clause (y) of Rule 120 which reads as under :-

> "Conditions of trading and marketing in the market area including any matter for which bye-laws are required to be made under these rules or for giving effect to the provisions of the Act and the rules."

. We are afraid Clause (y) below Rule 120 does not come to the rescue of the Market Committee in support of its case that it has the power to charge interest varying from 12% to 21% on the delayed dues of market fees and supervision charges under bye-law No.14(A). Section 31 as well as Sections 34A to 34C clearly provide for only penal charges and bye-law no.14 cannot be termed so as to cover condition of trading and marketing in the market area. We have also noticed that on issuance of the notice by the Market Committee, the petitioners have taken due steps

and during the pendency of the petitions or before the impugned orders for recovery were passed, they have deposited certain sums. In both the petitions it is not a case of inordinate delay in responding to the demands and, in fact, the demands have been substantially met within few months. No reasons have been given in the impugned orders as to why the Market Committee felt it appropriate to recover interest and not the penal charges from the petitioners. We, therefore, hold that the respondent no.1 has no powers to charge interest at the rate of 12% or any higher rate upto 21% on the delayed payment of market fees and supervision charges and it was not even otherwise justified to levy such charges in the instant cases.

18. Before we part with this judgment, it is necessary to make certain observations regarding the future steps to be taken by the petitioners as well as the respondent-Market Committee, more so when we have held that the petitioners are liable to pay market fees by recovering the same from the buyers in the market area of respondent no.1. The volume of vanaspati supplied to Mumbai city or to the entire market area of respondent no.1 are quite large but the manufacturers/suppliers may be considerably less in number than the buyers, when we consider regulating the marketing of vanaspti in future to tide over the

future difficulties and smoothen the collection of market fees so that the petitioners and the respondent no.1-Market Committee act in harmony. It is imperative that either the petitioners obtain premises in the market yard of respondent no.1 and open their depot /distribution centre for vanaspati by obtaining a licence and all the supplies catering to the area under the respondent no.1 are to be made from such depot/centre or in the alternative the respondent no.1 can employ some of its staff or the Government staff in the premises of the petitioner so as to account for the daily dispatches of vanaspati catering to the market area of respondent no.1. In either case, the Committee will have the power to recover the market fees as well as supervision charges from the petitioners. Form No.8 could be one of the more safe procedures for proper accounting or in the alternate the petitioners may have one more copy of their dispatch challans/bills marked for the respondent no.1 so that the dispatches made for the Mumbai market are accounted and monitored, either in the premises of the petitioner or in the depot/distribution centre located in the Market yard. We, therefore, suggest both the parties to sort out the arrangements for future on the above lines, as expeditiously as possible but in any case within a period of six months from now, by negotiations.

19. In the premises, these petitions fail so far as the market fees is concerned, but they succeed in respect of supervision charges and the interest levied by the respondent no.1 in the impugned orders. Hence they are partly allowed. The challenge to the recovery of market fees is dismissed. It is held that the Market Committee has no power to charge supervision charges and interest and, therefore, the impugned orders stand modified accordingly. We hold that the product vanaspati is an edible oil and an agri produce as defined under Section 2(1)(a) of the Act. Costs in cause. Fresh orders on levying market fees shall be issued, after hearing the petitioners, within two months by the APMC-Mumbai.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**